

# **EXHIBIT H**

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12 *Attorneys for Defendant*  
13 United States Fire Insurance Company

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 OAKLAND DIVISION

17 COPART INC.,

18 Plaintiff,

19 vs.

20 CRUM & FORSTER INDEMNITY  
21 COMPANY,<sup>1</sup> UNITED STATES FIRE  
22 INSURANCE COMPANY, and DOES 1-10,

23 Defendants.

24 AND RELATED COUNTERCLAIMS.

Case No.: C 07 02684 CW (EDL)

**DEFENDANT UNITED STATES FIRE  
INSURANCE COMPANY'S RESPONSES  
TO PLAINTIFF'S FIRST SET OF  
SPECIAL INTERROGATORIES**

25 **PROPOUNDING PARTY:** Plaintiff COPART, INC.

26 **RESPONDING PARTY:** Defendant UNITED STATES FIRE INSURANCE COMPANY

27 **SET NUMBER:** ONE

28 Defendant United States Fire Insurance Company objects and/or responds to plaintiffs'  
interrogatories as follows.

**GENERAL OBJECTIONS**

The responses herein are made solely for the purpose of this action. Each response is

<sup>1</sup> Dismissed by Order Upon Stipulation (6/15/07).

1 subject to all objections as to competence, relevancy, materiality, propriety, admissibility and all  
2 other objections on the grounds which would require the exclusion from evidence of any  
3 statement herein if any interrogatory were asked of, or any statements contained herein were  
4 made by, the witness present and testifying in court, all of which objections and grounds are  
5 expressly reserved and may be interposed at trial.

6 No incidental or implied admissions are intended by the responses herein. The fact that  
7 USFIC has responded or objected to any interrogatory or part thereof, should not be deemed an  
8 admission that USFIC accepts or denies the existence of any fact set forth by such interrogatory.  
9 The fact that USFIC answers part or all of any interrogatory shall not be construed as a waiver  
10 by USFIC of any objection or any part of any objection to any interrogatory, including the  
11 interrogatory so answered.

12 USFIC reserves the right to amend, correct, modify, supplement or change its responses  
13 to these interrogatories as facts are developed and disclosed during discovery which will take  
14 place, and further reserves its right to use or rely at trial on information or documents not set  
15 forth in these responses.

16 To the extent that any interrogatory or part thereof calls for information, legal analysis or  
17 reasoning, writings, communications or anything else protected from disclosure by the attorney-  
18 client privilege, the work product privilege or doctrine, or any privilege or doctrine protecting  
19 information and documents prepared for purposes of settlement negotiations, U.S. Fire objects  
20 to each and every interrogatory and part thereof and will not supply or render information or  
21 anything protected from discovery by virtue of such doctrines or privileges.

22 USFIC objects to the definition of "ADVICE OF COUNSEL" to the extent it purports to  
23 call for information protected by the attorney-client privilege, the work product privilege or  
24 doctrine, or any privilege or doctrine protecting information and documents prepared for  
25 purposes of settlement negotiations.

26 **SPECIAL INTERROGATORIES**

27 **SPECIAL INTERROGATORY NO. 1:**

28 Describe in detail each alleged misrepresentation USFIC alleges in Paragraph 67 of

1 USFIC's counterclaim that was made by Copart to USFIC, including the substance, the date  
2 made and the person making each of the alleged misrepresentations.

3 **RESPONSE TO NO. 1:**

4 USFIC incorporates all General Objections. Without waiving any of those objections,  
5 USFIC responds: Generally, USFIC contends that Copart misrepresented and concealed (a) the  
6 existence of some locations owned by Copart, and (b) the values of the exposures at said  
7 locations, and (c) the values of the exposures even at locations that were disclosed. The  
8 misrepresentations alleged by USFIC are set forth in further detail in its counterclaim in  
9 paragraphs 2 through 60, including the substance, the date made and the person or persons  
10 making such misrepresentations. Additional details, including the full extent of the  
11 misrepresentations, are the subject of ongoing discovery.

12 **SPECIAL INTERROGATORY NO. 2:**

13 Please identify the instances in which USFIC denied a claim for indemnification of a  
14 property loss under an all risk USFIC commercial property policy from January 1, 2000 through  
15 December 31, 2007 based, even partially, on the insured's failure to list a value for an item (e.g.,  
16 building, computer equipment etc.) on a Statement of Values or similar form, including the date  
17 the claim was made, the USFIC claims handler on that claim, the name of the independent  
18 adjuster hired by USFIC if any, and the date of the denial.

19 **RESPONSE TO NO. 2:**

20 USFIC incorporates all General Objections. USFIC also objects to this interrogatory on  
21 the grounds that the request is overbroad and to that extent irrelevant and not reasonably  
22 calculated to lead to the discovery of admissible evidence. USFIC further objects that the  
23 request is unduly burdensome and oppressive, because USFIC has no practical way to identify  
24 such "instances" other than to review every claim made in the given time frame. USFIC further  
25 objects to this interrogatory on the grounds that it seeks information regarding other policy  
26 holders, invades the privacy interest of other policyholders and seeks information regarding  
27 policies not at issue in this suit.

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1 **SPECIAL INTERROGATORY NO. 3:**

2 Please identify the Bates-stamp range of documents with USFIC's document  
3 productions in this case that constitutes USFIC's claims file regarding this claim.

4 **RESPONSE TO NO. 3:**

5 USFIC incorporates all General Objections. Without waiving any of those objections,  
6 USFIC responds: CLAIM 0001-CLAIM 0330.

7 **SPECIAL INTERROGATORY NO. 4:**

8 Identify (by name, address and phone number) any consultants, including lawyers or  
9 independent adjusters, hired by USFIC to provide advice regarding coverage for Copart's claim.

10 **RESPONSE TO NO. 4:**

11 USFIC incorporates all General Objections. USFIC further objects to this interrogatory  
12 to the extent it purports to call for information protected by the attorney-client privilege, the  
13 work product privilege or doctrine, or any privilege or doctrine protecting information and  
14 documents prepared for purposes of settlement negotiations. Without waiving any of those  
15 objections, USFIC responds: Butler Pappas, Weihmuller Katz Craig LLP, 777 South Harbour  
16 Island Blvd., Suite 500, Tampa Florida 33602; 813.281.1900.

17 **SPECIAL INTERROGATORY NO. 5:**

18 Did USFIC rely on the ADVICE OF COUNSEL in denying Copart's claim? (As used  
19 herein, the term "ADVICE OF COUNSEL" refers to any form of legal advice, provided by any  
20 in-house USFIC attorney or outside counsel, including without limitation, legal conclusions,  
21 legal recommendations, mental impressions, commentary or legal analysis received by USFIC  
22 in connection with Copart's claim, including any conclusions, recommendations, mental  
23 impressions, commentary or analysis from any attorney. ADVICE OF COUNSEL includes any  
24 information, which USFIC has not produced to Copart because of USFIC's assertion of any  
25 attorney-client privilege and/or work product doctrine.)

26 **RESPONSE TO NO. 5:**

27 USFIC incorporates all General Objections. USFIC further objects to this interrogatory  
28 on the grounds that it calls for information protected by the attorney-client privilege and the

1 work product privilege or doctrine. Without waiving any of those objections, USFIC responds:  
2 No.

3 **SPECIAL INTERROGATORY NO. 6:**

4 Is USFIC relying on the ADVICE OF COUNSEL DEFENSE in this case? (As used  
5 herein, the term "ADVICE OF COUNSEL DEFENSE" refers generally to the insurance  
6 coverage defense in bad faith actions whereby an insurer alleges that it acted in the good faith  
7 reliance on advice of counsel).

8 **RESPONSE TO NO. 6:**

9 USFIC incorporates all General Objections. USFIC further objects to this interrogatory  
10 on the grounds that it calls for information protected by the attorney-client privilege and the  
11 work product privilege or doctrine. Without waiving any of those objections, USFIC responds:  
12 No.

13 **SPECIAL INTERROGATORY NO. 7:**

14 Please explain the difference between "Agreed Value" and "Replacement Cost" under  
15 Item 4 and in the first "Other Provisions" section of the Supplemental Declarations page  
16 attached hereto as **Exhibit A**.

17 **RESPONSE TO NO. 7:**

18 USFIC incorporates all General Objections. Subject to said objections, USFIC responds:  
19 in the declarations, "Agreed Value" and "Replacement Cost" simply refer to the corresponding  
20 valuation clauses in the policy. Those clauses speak for themselves.

21 **SPECIAL INTERROGATORY NO. 8:**

22 Please explain the purpose of issuing the Commercial Property Coverage Part  
23 Supplement Declarations page attached hereto as **Exhibit A**?

24 **RESPONSE TO NO. 8:**

25 USFIC incorporates all General Objections. Without waiving any of those objections,  
26 USFIC responds: The purpose of issuing the Commercial Property Coverage Part Supplemental  
27 Declarations page was to supplement (with information for which space is provided in that  
28 page) the general and/or common policy declarations.

1 **SPECIAL INTERROGATORY NO. 9:**

2 State the number of property loss claims due to Hurricane Wilma tendered to USFIC  
3 from October, 2005 through October, 2007?

4 **RESPONSE TO NO. 9:**

5 USFIC incorporates all General Objections. USFIC further objects to this interrogatory  
6 on the grounds that it seeks information regarding other policy holders, invades the privacy  
7 interest of other policyholders and seeks information regarding policies not at issue in this suit.  
8 Without waiver of those objections, USFIC responds: 113.

9 **SPECIAL INTERROGATORY NO. 10:**

10 State all facts that support your contention that a building must be described, including  
11 precisely what the description must be, in the Statement of Values to qualify as covered  
12 property.

13 **RESPONSE TO NO. 10:**

14 USFIC incorporates all General Objections. USFIC further objects to the request as  
15 compound. Without waiver of those objections, USFIC responds: The "Building and Personal  
16 Property Coverage Form" states:

17 **A. Coverage**

18 We will pay for direct physical loss of or damage to Covered  
19 Property at the premises described in the Declarations caused by  
or resulting from any Covered Cause of Loss.

20 **1. Covered Property**

21 Covered Property, as used in this Coverage Part, means the  
22 type of property described in this Section . . . if a Limit of  
Insurance is shown in the Declarations for that type of  
property.

- 23 a. Building, meaning the building or structure  
24 *described in the Declarations* . . . .  
25 b. Your Business Personal Property located in or on the  
building described in the Declarations . . . .

26 The "Supplemental Declarations" (form FM 600.0.960 04/94), under "Item 2" ("Premises  
27 Described"), states, "See Schedule of Locations." The "Schedule of Locations" form, (form FM  
28



1 206.0.3 (04/94)), states, "As per schedule on file with company." The Statement of Values was  
2 the "schedule" filed with USFIC.

3 **SPECIAL INTERROGATORY NO. 11:**

4 Identify by Bates-number documents where USFIC explained to Marsh or Copart that a  
5 building must be described by stating its value in the Statement of Value form to qualify as  
6 covered property under USFIC's all risk commercial property policy.

7 **RESPONSE TO NO. 11:**

8 USFIC incorporates all General Objections. Without waving those objections, USFIC  
9 responds: The policies issued by USFIC required that a building be "described in the  
10 declarations" in order to qualify as Covered Property. As explained in USFIC's response to  
11 Interrogatory No. 10 above, the Statements of Values were incorporated into and made part of  
12 the declarations. The Statements of Values provided columns where buildings were to be  
13 described by replacement cost value, number of buildings, construction type, square footage,  
14 and whether the building(s) were sprinklered and/or alarmed. Marsh understood the necessity  
15 of the Statements of Values and proactively submitted them to USFIC in connection with its  
16 solicitation of premium quotations. Prior to submitting the statements to USFIC, Marsh  
17 repeatedly asked Copart to update and complete them. The Bates numbers of the policies, the  
18 Statements of Values, and the correspondence between Marsh and Copart are equally available  
19 to Copart.

20 **SPECIAL INTERROGATORY NO. 12:**

21 Why did USFIC stop using GAB-Robins as a vendor in 2007?

22 **RESPONSE TO NO. 12:**

23 USFIC incorporates all General Objections. USFIC also objects to this interrogatory on  
24 the grounds that the interrogatory is vague and ambiguous and seeks information which is  
25 irrelevant and unlikely to lead to the discovery of admissible evidence. Without waving those  
26 objections, USFIC responds: The discontinuance of GAB-Robins' status as a vendor was not  
27 connected to Copart's claim.

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1 **SPECIAL INTERROGATORY NO. 13:**

2 Identify the USFIC employees that participated in the decision to deny Copart's claim.

3 **RESPONSE TO NO. 13:**

4 USFIC incorporates all General Objections. USFIC further objects to this interrogatory  
5 to the extent it purports to call for information protected by the attorney-client privilege, the  
6 work product privilege or doctrine, or any privilege or doctrine protecting information and  
7 documents prepared for purposes of settlement negotiations. Without waiving any of those  
8 objections, USFIC responds: The claim was declined by Carlton Clarke. Mr. Clarke's decision  
9 was approved by Dennis McCarthy. Ron Keleman and James Kraus were informed of the  
10 decision before it was communicated to Copart.

11 **SPECIAL INTERROGATORY NO. 14:**

12 Describe in detail what "mistake" USFIC alleges in Paragraph 65 of USFIC's  
13 counterclaim, including the factual circumstances of the alleged "mistake."

14 **RESPONSE TO NO. 14:**

15 USFIC incorporates all General Objections. Without waiving any of those objections,  
16 USFIC responds: The "mistake" alleged by USFIC is set forth in paragraphs 62 through 65 of  
17 USFIC's counterclaim:

18 "62. At the time the parties formed the insurance contract that was reduced to writing  
19 in the form of the 2005-2006 Policy, it was the parties' mutual intent that the policy would  
20 cover only the buildings, personal property, and other exposures for which values were reported  
21 in the August 8, 2005 statement of values.

22 63. USFIC contends that the contract clearly and unambiguously express the mutual  
23 intent alleged above.

24 64. However, by way of its complaint in this action, Copart appears to contend that  
25 as written, the contract must be interpreted as covering all buildings, personal property, and  
26 other exposures at locations owned or operated by Copart, irrespective of whether the property  
27 was ever described to USFIC, whether values were ever reported to USFIC, and whether Copart  
28 ever paid a premium for the exposure.

1           65.     USFIC contests Copart's interpretation of the contract, but if the Court finds that  
2 Copart's interpretation is correct, then as a result of a mutual mistake (or the mistake of USFIC,  
3 which Copart at the time knew or suspected), the contract will not have truly expressed the  
4 intention of the parties."

5 **SPECIAL INTERROGATORY NO. 15:**

6           Identify the agreement or other writing, antecedent to the Policy No. 2441886561, that  
7 USFIC contends embodies the true intent of the parties as opposed to that Policy itself.

8 **RESPONSE TO NO. 15:**

9           USFIC incorporates all General Objections. Without waiving any of those objections,  
10 USFIC responds: The true intent and agreement of the parties was that only buildings described  
11 to USFIC by way of the Statement of Values (particularly, the columns therein for replacement  
12 cost value, number of buildings, construction type, square footage, and whether the building(s)  
13 were sprinklered and/or alarmed) would qualify as Covered Property. USFIC contends, in the  
14 first instance, that the Policy embodies that agreement. However, if the Court holds otherwise,  
15 then USFIC will seek reformation of that writing.

16 **SPECIAL INTERROGATORY NO. 16:**

17           Describe in detail the instructions that USFIC gave to Marsh or Copart concerning the  
18 procedures to follow in reporting values of properties to Marsh, and how and when USFIC gave  
19 those instructions.

20 **RESPONSE TO NO. 16:**

21           Marsh anticipated USFIC's need for Statements of Values and proactively supplied them  
22 to USFIC when soliciting premium quotes and other offers of coverage terms. Because of  
23 Marsh's proactive submission of Statements of Values, USFIC did not have to request them.  
24 The form used by Marsh for the Statements of Values was acceptable to USFIC. It included  
25 columns where replacement cost values for buildings (if any) at the listed locations were to be  
26 provided. The form also included columns where the number of buildings (if any), construction  
27 type, square footage, and whether the building(s) were sprinklered and/or alarmed were to be  
28 stated. Because that form was developed by Marsh itself (Copart's broker), USFIC saw no need

1 to provide instructions to Marsh on how to complete it. As between Marsh and Copart, the  
 2 instructions given are the subject of ongoing discovery, since USFIC was not privy to those  
 3 instructions, but at least some of the instructions are reflected in writings that Copart and Marsh  
 4 have produced. Those writings are equally available to Copart.

5 **SPECIAL INTERROGATORY NO. 17:**

6 Excluding Hurricane Wilma related claims, describe, including the date, amount, and  
 7 property involved, every claim that Copart has ever made to USFIC under any of the property  
 8 policies alleged in USFIC's counterclaim.

9 **RESPONSE TO NO. 17:**

10 USFIC incorporates all General Objections. Without waiving any of those objections,  
 11 USFIC responds:

12 Date of Loss	Amt. Paid	Location
13 8/29/05	\$0.00	New Orleans, LA
14 1/19/07	\$245,044.69	Kansas City, KS

15 **SPECIAL INTERROGATORY NO. 18:**

16 Itemize the damages that USFIC alleges it will have suffered as alleged in paragraph 72  
 17 of USFIC's counterclaim if USFIC's requested reformation is not granted.

18 **RESPONSE TO NO. 18:**

19 USFIC incorporates all General Objections. USFIC further objects to this interrogatory  
 20 on the ground that it is premature and that USFIC and its counsel have not had an opportunity to  
 21 complete discovery or investigation regarding the subject of this interrogatory. USFIC is  
 22 continuing to request and analyze information regarding the true nature and values of the  
 23 property and other exposures covered under the insurance policies issued by USFIC. Only after  
 24 Copart has produced the requested information such that USFIC can complete its evaluation,  
 25 will USFIC be able to calculate its damages.

26 USFIC further objects that this request is duplicative of Rule 26, and that USFIC has  
 27 already responded to Rule 26 by way of its initial disclosures. USFIC will supplement those  
 28 initial disclosures as soon as possible, but is not able to do so at this time, due to ongoing

1 discovery and consultation with experts which are currently privileged. Upon completion of  
2 discovery and the expert disclosure deadline, USFIC will disclose an expert report detailing the  
3 damages that USFIC will have ascertained.

4 DATED: May 12, 2008

5 BULLIVANT HOUSER BAILEY PC

6  
7 By 

8 Jess B. Millikan

9 Samuel H. Ruby

Judith A. Whitehouse

10 Attorneys for Defendant United States Fire  
11 Insurance Company  
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**VERIFICATION  
TO  
FOLLOW**

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- 12 -

DEFENDANT'S RESPONSES TO PLAINTIFF'S SPECIAL INTERROGATORIES (C 07 02684 CW (EDL))

**PROOF OF SERVICE**

*Copart Inc. v. Crum & Forster Indemnity Company, et al.*  
USDC, Northern District of California, Case No. C 07 2684 CW (EDL)

I am employed in the City and County of San Francisco by the law firm of Bullivant Houser Bailey ("the business"), 601 California Street, Suite 1800, San Francisco, CA 94108. I am over the age of 18 and not a party to this action. On May 12, 2008, I served the document(s) entitled:

**DEFENDANT UNITED STATES FIRE INSURANCE COMPANY'S RESPONSES TO  
PLAINTIFF'S FIRST SET OF SPECIAL INTERROGATORIES**

upon the following party(ies):

Philip L. Pillsbury  
Vedica Puri  
PILLSBURY & LEVINSON, LLP  
600 Montgomery St., 31<sup>st</sup> Flr.  
San Francisco, CA 94111  
Tel: (415) 433-8000  
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Attorneys for Plaintiff  
COPART INC.

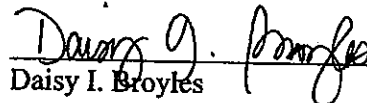
(X) **BY MAIL** (CCP § 1013(a)): I am readily familiar with the ordinary practice of the business with respect to the collection and processing of correspondence for mailing with the United States Postal Service. I placed a true and correct copy(ies) of the above-titled document(s) in an envelope(s) addressed as above, with first class postage thereon fully prepaid. I sealed the aforesaid envelope(s) and placed it(them) for collection and mailing by the United States Postal Service in accordance with the ordinary practice of the business. Correspondence so placed is ordinarily deposited by the business with the United States Postal Service on the same day.

( ) **BY FACSIMILE TRANSMISSION** (CCP § 1013(e), CRC 2008(e)): I transmitted the document(s) by facsimile transmission by placing it(them) in a facsimile machine (telephone number 415-352-2701) and transmitting it(them) to the facsimile machine telephone number(s) listed above. A transmission report was properly issued by the transmitting facsimile machine. Each transmission was reported as complete and without error. A true and correct copy of the transmission report is attached hereto.

( ) **BY OVERNIGHT DELIVERY** (CCP § 1013(c)): I am readily familiar with the ordinary practice of the business with respect to the collection and processing of correspondence for mailing by Express Mail and other carriers providing for overnight delivery. I placed a true and correct copy(ies) of the above-titled document(s) in an envelope(s) addressed as above, with first class postage thereon fully prepaid. I sealed the aforesaid envelope(s) and placed it(them) for collection and mailing by Express Mail or other carrier for overnight delivery in accordance with the ordinary practice of the business. Correspondence so placed is ordinarily deposited by the business with Express Mail or other carrier on the same day.

- 1 ( ) BY PERSONAL SERVICE UPON AN ATTORNEY (CCP § 1011(a)): I placed a true  
2 and correct copy(ies) of the above-titled document(s) in a sealed envelope(s) addressed  
3 as indicated above. I delivered each of said envelope(s) by hand to a receptionist or a  
4 person authorized to accept same at the address on the envelope, or, if no person was  
5 present, by leaving the envelope in a conspicuous place in the office between the hours  
6 of nine in the morning and five in the afternoon.
- 7 ( ) BY HAND Pursuant to Code of Civil Procedure § 1011, I directed each envelope to the  
8 party(ies) so designated on the service list to be delivered by courier this date. A proof  
9 of service by hand executed by the courier shall be filed/lodged with the court under  
10 separate cover.
- 11 ( ) BY PERSONAL SERVICE UPON A PARTY (CCP § 1011(b)): I placed a true and  
12 correct copy(ies) of the above-titled document(s) in a sealed envelope(s) addressed as  
13 indicated above. I delivered each of said envelope(s) by hand to a person of not less  
14 than 18 years of age at the address listed on the envelope, between the hours of eight in  
15 the morning and six in the evening.

16 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
17 May 12, 2008, at San Francisco, California.

18   
19 Daisy I. Broyles

20 \*\*\*\*\*